

CRS Issue Brief for Congress

Received through the CRS Web

Gun Control

Updated December 8, 1999

William Krouse
Domestic Social Policy Division

CONTENTS

SUMMARY

MOST RECENT DEVELOPMENTS

BACKGROUND AND ANALYSIS

Pro/Con Debate

Pertinent Statistics

- Number of Guns
- Criminal Use
- Gun Violence and Youth
- Injuries
- Suicides, Accidents, and Other Deaths
- Self-Defense
- Recreation
- Brady Act Implementation

Federal Law

Developments in the 106th Congress

- Gun Shows
- Semiautomatic Assault Weapons
- Child Safety Locks
- Violent Juvenile Offenders Firearms Ban
- Pawnshops
- Internet Gun Sales
- Hand Guns
- Federal Firearm Law Enforcement
- Background Check Record Retention
- Background Check Fee
- Project Exile and Federal Firearm Prosecutions
- Gun Buy-Back Programs
- Gun Industry Liability

Gun Control

SUMMARY

Members of Congress continue to debate the efficacy and constitutionality of the federal regulation of firearms and ammunition. Various federal laws have been enacted since 1934 to promote such regulation.

Supporters of such controls argue that they curb access by criminals, juveniles, and other “high-risk” individuals. They contend that only federal measures can succeed in reducing the availability of guns. Some seek broad policy changes such as near-prohibition of non-police handgun ownership or the registration of all firearm owners or firearms. They find no constitutional barrier to these measures and no significant social costs. Others advocate more moderate policies that they maintain would not impede ownership and legitimate firearm transfers.

Opposition to federal controls also varies. Gun control opponents deny that such policies keep firearms out of the hands of high-risk persons; rather, they argue, controls often create burdens for law-abiding citizens and infringe upon constitutional rights secured by the Second Amendment. Some argue further that widespread gun ownership is one of the best deterrents to crime as well as to potential tyranny, whether by gangs or by government. They may also criticize the notion of enhancing federal, as opposed to state, police powers.

The two most significant federal statutes controlling firearms in the civilian population are the National Firearms Act of 1934 and the Gun Control Act of 1968, as amended. The 1934 Act established strict registration requirements and a transfer tax on machine guns and short-barreled long guns. The 1968 Act prohibits mail-order sales and the interstate sales of firearms, prohibits transfers to

minors, limits access to “new” assault weapons, and sets forth penalties and licensing requirements for manufacturers, importers, and dealers.

Congress, with the support of the Clinton Administration, has enacted significant amendments to the Gun Control Act. The 103rd Congress established significant new restrictions on the manufacture, sale, and possession of firearms through the Brady Act (P.L. 103-159) and the assault weapon ban in the Violent Crime Control Act of 1994 (P.L. 103-322). In the 104th Congress, persons convicted of a domestic violence crime were prohibited from possessing a firearm. In the 105th Congress, the omnibus appropriations act (P.L. 105-277) included prohibitions on charging a fee for background checks under the Brady Act and gun sales to non-citizens who are temporarily admitted to the United States (with exceptions). The act also requires that federal licensees agree to sell gun storage and safety devices.

The 106th Congress has considered proposals to 1) require background checks at gun shows, 2) require hand gun safety locks, and 3) increase controls on assault weapons. Such provisions were included in the Senate-passed Violent and Repeat Juvenile Offender Accountability Act of 1999 (S. 254). The House adopted similar provisions as amendments to the Mandatory Gun Show Background Check Act (H.R. 2122); however, this bill was defeated. The Senate amended the House-passed Juvenile Justice Reform Act (H.R. 1501) with the text of S. 254. It remains an open question whether conferees will resume consideration of H.R. 1501 in the 2nd Session of the 106th Congress.

MOST RECENT DEVELOPMENTS

At this date, it remains an open question whether conferees will resume consideration of gun control provisions included in H.R. 1501 during the 2nd Session of the 106th Congress. The Senate amended H.R. 1501 with the text of S. 254, the Violent and Repeat Juvenile Offender Accountability Act of 1999, and passed the measure on July 28, 1999. The House-passed Juvenile Justice Reform Act of 1999 (H.R. 1501) includes gun control provisions that would increase penalties for misusing firearms or explosives, and authorize increased funding for federal gun control law enforcement, but it does not include provisions requiring background checks for all firearm transfers at gun shows. Such provisions were included in S. 254, and are included in H.R. 1501, as passed the Senate. (See Developments in the 106th Congress below, and CRS Issue Brief 90078, Crime Control: The Federal Response).

BACKGROUND AND ANALYSIS

Pro/Con Debate

Through the years, legislative proposals to restrict the availability of firearms to the public have raised the following questions: Does gun control constitute crime control? Can the nation's rates of homicide, robbery, and assault be reduced by the stricter regulation of firearm commerce or ownership? Would restrictions stop attacks on public figures or thwart deranged persons and terrorists? Would household, street corner, and schoolyard disputes be less lethal if firearms were more difficult and expensive to acquire? Would more restrictive gun control policies have the unintended effect of impairing citizens' means of self-defense?

In recent years, proponents of gun control legislation have often held that only federal laws can be effective in the United States. Otherwise, they say, states with few restrictions will continue to be sources of guns that flow illegally into restrictive states. They believe that the Second Amendment to the Constitution, which states that "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms shall not be infringed," (1) is obsolete; or (2) is intended solely to guard against suppression of state militias by the central government and therefore restricted in scope by that intent; or (3) does not guarantee a right that is absolute, but one that can be limited by reasonable requirements. They ask why a private citizen needs any firearm that is not designed primarily for hunting or other recognized sporting purposes.

Also, proponents have advocated policy changes on specific types of firearms or components that appear to be useful primarily for criminal purposes or that pose unusual risks to the public. Fully automatic firearms (i.e., machine guns) and short-barreled rifles and shotguns have been subject to strict regulation since 1934. Fully automatic firearms have been banned from private possession since 1986, except for those legally owned prior to 1986. More recently, "Saturday night specials" (loosely defined as inexpensive, small handguns), "assault weapons," ammunition feeding devices with capacities for more than seven rounds, and certain ammunition have been the focus of control efforts.

Opponents of gun control vary in their positions with respect to specific forms of control but generally hold that gun control laws do not accomplish what is intended. They argue that

it is as difficult to keep weapons from being acquired by “high risk” individuals, even under federal laws and enforcement, as it was to stop the sale and use of liquor during Prohibition. In their view, a more stringent federal firearm regulatory system would only create problems for law-abiding citizens, bring mounting frustration and escalation of bans by gun regulators, and possibly threaten citizens’ civil rights or safety. Some argue that the low violent crime rates of other countries have nothing to do with gun control, maintaining instead that multiple cultural differences are responsible.

Gun control opponents also reject the assumption that the only legitimate purpose of ownership by a private citizen is recreational (i.e., hunting and target-shooting). They insist on the continuing need of people for effective means to defend person and property and point to studies indicating that gun possession lowers the incidence of crime. They say that the law enforcement and criminal justice system in the United States has not demonstrated the ability to furnish an adequate measure of public safety. They further believe that the Second Amendment includes a right to keep arms as a defense against potential government tyranny, pointing to numerous examples in other countries of the use of firearm restrictions to curb dissent and secure government power.

The debate has been intense. To supporters of restrictive controls, the opposition is out of touch with the times, dogmatic about the Second Amendment, or lacking in concern for the problems of crime and violence. To opponents, control advocates are naive in their faith in the power of regulation to solve social problems, bent on disarming the American citizen for ideological or social reasons, or moved by hostility to firearms and gun enthusiasts.

Pertinent Statistics

Number of Guns. The National Institute of Justice (NIJ) reported in a national survey that in 1994, 44 million people, approximately 35% of households, owned 192 million firearms, 65 million of which were handguns. Seventy-four percent of those individuals were reported to own more than one firearm. The Bureau of Alcohol, Tobacco, and Firearms (ATF) estimates that as of the end of 1996, approximately 242 million firearms were available for sale to or were possessed by civilians in the United States. That total includes roughly 72 million handguns (mostly pistols, revolvers, and derringers), 76 million rifles, and 64 million shotguns. Most guns available for sale are produced domestically. In recent years, one to two million handguns were manufactured each year, along with one million rifles and less than one million shotguns. Annual imports are considerably fewer — from 200,000 to 400,000 handguns, 200,000 rifles, and 100,000 to 200,000 shotguns. Retail prices of guns vary widely, from \$50 or less for inexpensive, low-caliber handguns to over \$1,500 for high-quality rifles or shotguns. Data are not available on the number of “assault weapons” in private possession or available for sale, but estimates prepared in 1989 by a firearms expert associated with the Smithsonian Institution generally placed the number of such firearms at that time in the range of one to four million, less than 3% of the number of guns estimated to exist in the civilian market.

Criminal Use. Reports submitted by state and local law enforcement agencies to the Federal Bureau of Investigation (FBI) and published annually in the *Uniform Crime Report* indicate that both the crime rate and the violent crime rate have declined since 1981. Of the homicides in which the type of weapon could be identified, 60% to almost 70% have involved

firearms each year. The number of homicides and the proportion involving firearms have declined in recent years. In 1998, of the 14,088 homicides in which the type of weapon was identified, 65% (9,143) were committed with firearms. Of those committed with firearms, 81% (7,361) involved handguns. Some data are available on one particular type of criminal act: workplace violence. According to a July 1998 report issued by the Bureau of Justice Statistics (BJS) of the U.S. Department of Justice, fewer than 10% of all workplace violent crimes involved firearms.

The other principal source of national crime data is the *National Crime Victimization Survey* (NCVS) conducted by the Bureau of the Census and published by BJS. The NCVS database provides some information on the weapons used by offenders, based on victims' reports. Based on data provided by survey respondents in calendar year 1998, BJS estimated that, nationwide, firearms were used by offenders in 670,500 criminal incidents, roughly 10% of all violent crimes reported to the NCVS.

Gun Violence and Youth. Firearm homicide rates for the 15-to 24-year-old age group have declined in recent years. According to the National Center for Health Statistics of the Public Health Service, from 1984 to 1993 the firearm homicide rate for the 15- to 24-year-old age group increased 158%. During this period, a teenager was more likely to die from a gunshot wound than from all other natural causes combined. Since then, gun-related violence has declined. In 1996, it was nearly 16 per 100,000 persons, and a teenager was more likely to die in an automobile accident than from a gunshot wound. The firearm homicide rate, however, is still higher for that age group than for any other group. Young African-American males have the highest homicide victimization rate of any race or gender. Although gun-related violence in schools is statistically a rare event, a recent Department of Justice survey indicated that 12.7% of students ages 12 to 19 reported knowing a student who brought a firearm to school.

Injuries. The Firearms Injury Surveillance Study, initiated by the Centers for Disease Control and Prevention, Department of Health and Human Services, collects data about gun-related injuries treated at hospitals. According to the most recent data from the study, hospital emergency rooms reported treating 69,554 non-fatal firearms injuries in 1996.

Suicides, Accidents, and Other Deaths. Another source of national data on firearms deaths is the publication *Vital Statistics*, published each year by the National Center for Health Statistics. Firearms deaths reported by coroners in each state are presented in four categories: homicides and legal intervention, suicides, accidents, and unknown circumstances. In 1997, a total of 32,436 firearms deaths occurred, according to such reports. Of this total, 13,522 were homicides or due to legal intervention; 17,566 were suicides; 981 were unintentional (accidental) shootings; and 367 were of unknown cause.

Self-Defense. According to the Bureau of Justice Statistics, NCVS data from 1987 to 1992 indicate that in each of those years, roughly 62,200 victims of violent crime (1% of all victims of such crimes) used guns to defend themselves. Another 20,000 persons each year used guns to protect property. Persons in the business of self-protection (police officers, armed security guards) may have been included in the survey. Another source of information on the use of firearms for self-defense is the "National Self Defense Survey" conducted by criminology professor Gary Kleck of Florida State University in the spring of 1993. Citing responses from 4,978 households, Dr. Kleck estimated that handguns have been used 2.1

million times per year for self-defense, and that all types of guns have been used approximately 2.5 million times a year for that purpose. According to a poll published in *USA Today*, December 30, 1993, one in seven (14%) of those surveyed had used a gun in self-defense.

Why do these numbers vary? Law enforcement agencies do not collect information on the number of times civilians use firearms to defend themselves or their property against attack. Such data have been collected in household surveys. The contradictory nature of the available statistics may be partially explained by methodological factors. That is, these and other criminal justice statistics reflect what is *reported* to have occurred, not necessarily the actual number of times certain events occur. Victims and offenders are sometimes reluctant to be candid with researchers. So, the number of criminal incidents can only be estimated, making it difficult to state with certainty the accuracy of statistics such as the number of times firearms are used in self-defense. For this and other reasons, criminal justice statistics often vary when different methodologies are applied.

Survey research can be limited, sometimes not providing the right tools for producing satisfactory levels of precision from small incident populations. For example, the sample in the National Self-Defense Survey might have been too small, given the low incidence rate and the inherent limitations of survey research.

Recreation. According to the National Institute of Justice (NIJ), in 1994 recreation was the most common motivation for owning a firearm. There were approximately 15 million hunters, about 35% of gun owners, in the United States and an approximately equal percentage of the owners of firearms engaged in sport shooting in 1994. The U.S. Fish and Wildlife Service reported that 31.6 million persons purchased hunting licenses or permits in 1993 and, according to the National Sporting Goods Association, in that year approximately 18.5 million persons took part in firearms sporting activities.

Brady Act Implementation. Implementation of phase II of the Brady Act began on November 30, 1998. During the first 7 months of operation (through June 30, 1999), the National Instant Background Check System (NICS), operated by the Federal Bureau of Investigation (FBI), received 4,726,078 requests from state agencies and firearms dealers. Of this number, 2,295,013 were handled by the FBI and 2,431,065 were handled by state agencies. In 16 states, state agencies serve as points of contact (POCs), and conduct full background checks for both long guns and handguns. In 11 states, state agencies conduct partial background checks for handguns only. In POC states, federal firearm licensees contact the state agency, rather than the FBI. In non-POC states, federal firearm licensees contact the FBI directly through the NICS system.

Of NICS checks handled by the FBI, 73% of the checks resulted in immediate approvals of firearm sales, and 95% were turned around within 2 hours. The remaining 5% of checks resulted in a delayed sale. In many cases, these sales were delayed, because there was an outstanding charge against the person seeking to purchase the firearm for which there was no final disposition. Under current law, the FBI is authorized to delay the sale for three business days in order to determine the outcome of the charge and, thus, establish the eligibility of the transferee to possess a firearm. For state agencies, background checks may not be as expeditious. Background checks through state agencies, however, may be more thorough, since state agencies may have access to databases and records that are not available

through NICS. For example, many state agencies may have access to records on people who would be prohibited from possessing a firearm, because they had been involuntarily committed to a mental institution, or are under a domestic violence restraining order. For further information, see *National Instant Criminal Background Check System (NICS): The First Seven Months* (Washington, revised August 1, 1999). See: [<http://www.fbi.gov/programs/nics/>].

Since November 1998, the FBI has made over 75,000 referrals to the ATF of persons who made false statements regarding their eligibility to possess a firearm on the ATF Form 4473 as part of the Brady process. Of this number, the ATF has processed about 70,000 of these cases, referring about 20,000 cases to the field for investigation. As a result, 266 cases have been forwarded to the U.S. Attorneys for prosecution, and the ATF has made 82 NICS-related arrests as of October 21, 1999.

During phase I of the Brady Act, from December 1993 through November 1998, there was a waiting period of up to 5 days for handgun transfers in states without instant check systems. During this period, thousands of prospective purchasers were prohibited from receiving handguns. The Department of Justice reported in early 1998, on the basis of survey findings, that background checks prevented firearm sales to over 300,000 felons, fugitives, and others prohibited from receiving or possessing firearms. In a report (GAO/GGD-96-22) released January 25, 1996, the General Accounting Office noted that as of July 1995, at least seven persons nationwide had been successfully prosecuted for making false statements related to the Brady Act provisions. For further information on Brady Act implementation, see *Presale Handgun Checks, the Brady Interim Period, 1994-98: A National Estimate* (Washington, June 1999). See: [<http://www.ojp.usdoj.gov/bjs/pub/pdf/phc98.pdf>].

Federal Law

Two major federal statutes regulate the commerce in firearms, or their ownership: the National Firearms Act of 1934 (26 U.S.C. 5801 et seq.) and the Gun Control Act of 1968, as amended (18 U.S.C. Ch. 44, Section 921 et seq.).

The National Firearms Act was originally designed to make it difficult to obtain types of firearms perceived to be especially lethal or to be the chosen weapons of "gangsters," most notably machine guns and short-barreled long guns. That law taxes all aspects of the manufacture and distribution of such weapons. Also, it compels the disclosure (through registration with the Secretary of the Treasury) of the production and distribution system from manufacturer to buyer.

The Gun Control Act of 1968, as amended, contains the principal federal restrictions on domestic commerce in small arms and ammunition. The statute requires all persons manufacturing, importing, or selling firearms *as a business* to be federally licensed; prohibits the interstate mail-order sale of all firearms; prohibits interstate sale of handguns generally, sets forth categories of persons to whom firearms or ammunition may not be sold (such as persons under a specified age or with criminal records); authorizes the Secretary of the Treasury to prohibit the importation of non-sporting firearms; requires that dealers maintain records of all commercial gun sales; and establishes special penalties for the use of a firearm in the perpetration of a federal drug trafficking offense or crime of violence. Transactions

between persons “not engaged in the business” are not covered by the Act. These transactions and other matters such as possession, registration, and the issuing of licenses to the owners of firearms are covered by state laws or local ordinances.

The Gun Control Act of 1968 prohibits federal firearm licensees from selling or delivering a rifle or shotgun to a person under 18 years of age, or a handgun to a person under 21 years of age.

The following principal changes have been enacted to the Gun Control Act since 1968.

- The “Firearms Owners Protection Act,” McClure-Volkmer Amendments (P.L. 99-308, 1986) eases certain interstate transfer and shipment requirements for long guns, defines the term “engaged in the business,” eliminates some record-keeping requirements, and bans the private possession of machine guns not legally owned prior to 1986.
- The “Armor Piercing Ammunition” Ban (P.L. 99-408, 1986, amended in P.L. 103-322, 1994) prohibits the manufacture and importation of ammunition composed of certain metal substances and certain full-jacketed ammunition.
- The Undetectable Firearms Act (P.L. 100-649, 1988), also known as the “plastic gun” legislation, bans the manufacture, import, possession, and transfer of firearms not detectable by security devices.
- The Gun-Free School Zone Act of 1990 (P.L. 101-647), as originally enacted, was ruled unconstitutional by the U.S. Supreme Court (*United States v. Lopez*, 514 U.S. 549 (1995), April 26, 1995). The Act prohibited possession of a firearm in a school zone (on the campus of a public or private school or within 1,000 feet of the grounds). In response to the Court’s finding that the Act exceeded Congress’s authority to regulate commerce (the Court ruled that possession of a gun is not an economic activity affecting interstate commerce), the 104th Congress approved amendments (P.L. 104-208) requiring federal prosecutors to include evidence that the firearms “moved in” or affect interstate commerce.
- The Brady Handgun Violence Prevention Act, 1993 (P.L. 103-159) requires that law enforcement officers conduct background checks of prospective purchasers of firearms. On July 3, 1997, Attorney General Janet Reno said the system would be ready by the 1998 deadline. A week earlier, on June 27, 1997, the Supreme Court in *Printz v. U.S.*, 117 S. Ct. 2365, ruled that the background check requirement violates the Tenth Amendment but did not address the remainder of the Act’s provisions, leaving a voluntary background-check system in place. On January 14, 1998, Treasury Secretary Robert E. Rubin and Attorney General Janet Reno announced that, once again, Brady background checks on prospective handgun purchasers will be conducted in every state in the Union. Their announcement came after talks between federal authorities and representatives of Arkansas and Ohio resulted in those states agreeing to resume gun purchase background checks for the federal government.

- The Violent Crime Control and Law Enforcement Act of 1994 (P.L. 103-322) prohibits the manufacture or importation of semiautomatic assault weapons and large capacity ammunition feeding devices (for a 10-year period). In the case of large capacity ammunition feeding devices, the ban on importation applies to those devices manufactured after September, 1994. This Act provides an exception for the transfer, sale, or possession of semiautomatic assault weapons and large capacity ammunition feeding devices lawfully possessed on the date of enactment. This Act also bans the sale or transfer of handguns and handgun ammunition to, or possession of handguns and handgun ammunition by, juveniles (under 18 years of age) without prior written consent from the juvenile's parent or legal guardian; exceptions related to employment, ranching, farming, target practice, and hunting are provided. In addition, the Act disqualifies persons under court orders related to domestic abuse from receiving a firearm from any person or possessing a firearm. It also enhances penalties for the criminal use of firearms and makes other changes to existing law.
- Federal Domestic Violence Gun Ban (the Lautenberg Amendment, in the Omnibus Consolidated Appropriations Act for FY1997, P.L. 104-208) prohibits persons convicted of a misdemeanor crime of domestic violence from possessing guns and ammunition. The ban applies retroactively, regardless of when the offense was adjudicated. On January 21, 1997, the Fraternal Order of Police (civil case 97-145) filed suit to challenge the law's retroactivity as unconstitutional. On August 28, 1998, the U.S. Court of Appeals for the District of Columbia found in favor of the Fraternal Order of Police regarding provisions of the Lautenberg Amendment to be in violation of the equal protection clause. A motion for rehearing, however, was filed by the Department of Justice. The U.S. Court of Appeals of the District of Columbia reversed its earlier ruling on April 16, 1999, stating that "there is no fundamental right to possess a gun in a community service job and that the Fraternal Order of Police had presented no evidence that officers who lost their jobs because of the law were denied due process." It is reported that the Fraternal Order of Police will appeal this ruling as far as the Supreme Court.

Developments in the 106th Congress

In the 106th Congress, debate over measures to increase federal regulation of firearms has intensified in the wake of a string of shootings, most notably, the incident at Columbine High School in Littleton, Colorado on April 20, 1999.

Most recently, on November 6, 1999, it was reported in the *Congressional Quarterly Weekly Report* (p. 2655) that a draft compromise proposal on the most contentious gun control provision — extending the "Brady" instant background checks to all firearm transfers at gun shows — was offered by the Chair of the House Judiciary Committee, Representative Henry Hyde, but this compromise proposal was rejected by the minority leadership. Consequently, at this time, it remains an open question whether conferees will resume consideration of H.R. 1501 during the 2nd Session of the 106th Congress.

On July 28, 1999, the Senate considered the House-passed Juvenile Justice Reform Act of 1999 (H.R. 1501), amended it with the text of the Senate-passed Violent and Repeat Juvenile Offender Accountability Act of 1999 (S. 254), and passed the measure. Previously, on July 15, the House voted to return S. 254 to the Senate on the grounds that it infringed upon the privileges of the House by including a revenue provision that did not originate in the House. This provision, to ban the importation of high capacity ammunition feeding devices, was not included in the Senate amendment to H.R. 1501.

The House-passed juvenile justice bill (H.R. 1501) includes gun control provisions that would increase penalties for misusing firearms or explosives, and authorize increased funding of federal gun control law enforcement. This measure, however, does not include provisions that would 1) require background checks for all firearm transfers at gun shows, 2) require safety locks with handguns, and 3) place further controls on assault weapons and ammunition clips. Such provisions were included S. 254, which the Senate passed on May 20, by a vote of 73 to 25. On June 17-18, the House adopted similar provisions to those in S. 254 as amendments to the Mandatory Gun Show Background Check Act (H.R. 2122), but this bill was defeated by a vote of 280 to 147.

Regarding H.R. 1501, the House has adopted four motions to instruct conferees:

- On July 30, the House passed a motion to instruct conferees to refrain from weakening existing law and to include gun show provisions in the conference version of the bill, by a vote of 305 to 84.
- On September 23, the House passed a motion to instruct conferees that was nearly identical to the one passed on July 30, by a vote of 305 to 117.
- On September 24, the next day, the House passed a motion to instruct conferees that the agreement should include provisions that would 1) require unlicensed dealers at gun shows to conduct background checks, 2) ban juveniles from possessing semiautomatic assault weapons, 3) require safety locks be sold with handguns, and 4) ban violent juvenile offenders from possessing firearms, by a vote of 241 to 167.
- On the same day, the House passed another motion to instruct conferees to reject all provisions that do not recognize the “individual right of American citizens to keep and bear arms,” and that would “impose unconstitutional restrictions on the Second Amendment rights of individuals,” by a vote of 337 to 73.

Prior to Senate consideration of S. 254, the Administration delivered a legislative package to Congress on May 9. The accompanying legislative language was introduced by Senator Schumer (S. 995) and Representative Conyers (H.R. 1768). In a press statement on April 27, 1999, Deputy Attorney General Eric Holder outlined a number of gun control proposals included in this legislative package.

Gun Shows. Under current law, instant background checks are only required for firearm transfers made by federal firearm licensees. Non-licensed vendors, that is, private citizens who are not “engaged in the business,” are not required or authorized to initiate an instant background check for persons to whom a firearm would be transferred. Consequently, persons prohibited from possessing a firearm, like convicted felons, could bypass the instant background check system by buying a firearm from a private citizen at a gun show. The

Administration and others see this as a loophole in the law. For further information see *Gun Shows: Brady Checks and Crime Gun Traces*, (Washington: January 1999). See: [<http://www.atf.treas.gov/>], click on "Publications."

During consideration of S. 254, the Senate debated five amendments related to gun shows. On May 12, the Senate rejected an amendment, offered by Senator Lautenberg, that would have required that all firearms transfers at gun shows be made through federal firearm licensees. On the same day, the Senate approved an amendment, offered by Senator Craig, that would have created a special licensing and registration process so that non-licensees who sought to transfer firearms at gun shows could initiate instant background checks. Opponents criticized the construction of the amendment's language on the basis that the special licensing and registration provisions were voluntary. On May 14, the Senate passed an amendment, offered by Senator Hatch and Senator Craig, that built on the original Craig amendment by requiring that all firearm transfers at gun shows be made through a federal firearm licensee or a special licensee/registrant.

On May 20, the Senate passed an amendment, offered by Senator Lott for Senator Gordon Smith, to insert language strengthening the mandate that special licensees for gun shows initiate instant background checks before transferring firearms to any person. (This amendment also included a provision to strip out a section of the original Craig amendment related to pawnshops.) Later in the same day, however, the Senate passed an amendment, offered by Senator Lautenberg, that renders the entire Craig amendment and the gun show provisions included in the Hatch/Craig amendment null and void. Similar to the previously rejected Lautenberg amendment, the second Lautenberg amendment would require that all firearm transfers go through federal firearm licensees, when such transfers would be made by private citizens (non-licensed vendors). It would also require that gun show promoters, persons who organize, plan, promote, or operate gun shows, be registered with the Secretary of the Treasury prior to organizing such an event. This amendment passed by a vote of 51 to 50, with Vice President Gore casting the deciding vote.

The gun show provisions in H.R. 2122, *which did not pass*, would have also required gun show organizers to register with the Secretary of the Treasury, and that all firearm transfers at gun shows be subject to instant background checks. This bill, however, includes "instant check registrant" provisions that would allow persons other than federal firearm licensees to conduct instant background checks at gun shows. In addition, H.R. 2122 would have also changed the amount of time that a firearm transfer can be delayed, when instant background checks result in tentative confirmations from "three consecutive business days" to "72 hours." The House adopted an amendment, offered by Representative Dingell, to require that instant background checks at gun shows be completed with "24 hours." The House debated two other amendments, offered by Representatives McCarthy and Conyers, that included gun show language similar to the Senate-adopted Lautenberg language, but both amendments were defeated.

For similar legislation that would require gun show promoters to register with the Secretary of the Treasury, and that instant background checks be completed for all firearm transfers at gun shows, see H.R. 2037, H.R. 902/S. 443.

Semiautomatic Assault Weapons. The Administration has called for enactment of two proposals related to semiautomatic assault weapons. The first would prohibit the sale or

transfer to, or possession of semiautomatic assault weapons and large capacity ammunition magazines for juveniles. (For similar legislation, see H.R. 2037 and S. 891.) The second would ban the importation of all large capacity ammunition magazines manufactured prior to September, 1994. (For similar legislation, see H.R. 1037 and H.R. 2037.) The Senate, on May 13, passed amendments to S. 254 that are similar to these measures. An amendment, offered by Senator Ashcroft, would ban juveniles from possessing assault weapons and large capacity ammunition feeding devices. The House adopted a similar amendment to H.R. 2122 offered by Representative McCollum, but this bill was defeated. An amendment, offered by Senator Feinstein, would ban the importation of all large capacity ammunition feeding devices. Again, the House adopted a similar amendment to H.R. 2122 offered by Representative Hyde, but this bill was defeated. Later, this provision was the source of contention between the Senate and House, since it has been viewed as a revenue provision that did not originate in the House. The House voted on July 15 to return S. 254 to the Senate. It is notable that the Senate-passed version of H.R. 1501, which was amended with the text of S. 254, does not include this provision.

Child Safety Locks. The Administration also called for requiring child safety locks to be sold with every newly purchased firearm. (For similar legislation, see H.R. 2037, S. 149 and S. 319.) On May 18, the Senate passed an amendment to S. 254, offered by Senator Kohl and Senator Chafee, to require that gun storage and safety devices accompany every newly sold, delivered, or transferred handgun. The House adopted a similar amendment to H.R. 2122, offered by Representative Davis, but this bill was subsequently defeated.

Violent Juvenile Offenders Firearms Ban. The Administration also proposed disqualifying anyone who adjudicated to have committed violent crime as a juvenile (under 18 years of age) from possessing a handgun. (For similar legislation, see H.R. 2037, S. 9, S. 254, and S. 991.) On May 14, the Senate passed amendment no. 344 to S. 254, offered by Senator Hatch and Senator Craig. Among other things, this amendment would ban juveniles who have committed an act that, if committed by an adult, would be a serious violent felony, from possessing a firearm. The House adopted a similar amendment to H.R. 2122 offered by Representative Rogan, but this bill was subsequently defeated.

Pawnshops. Individuals purchasing firearms from pawnshops are subject to instant background checks, as are persons who sell their firearms to pawnshops and later seek to reclaim their firearms. Further, a pawnbroker may initiate an instant background check when the firearm is offered as collateral for a loan. If the check should result in a denial, the pawnbroker must inform the chief law enforcement officer within 48 hours. The Craig amendment of May 12 would have overturned these provisions related to pawnshop firearm transfers. On May 20, the Senate passed the Lott/Smith/Jeffords amendment to strip out the pawnshop provision in the Craig amendment. The Senate, however, subsequently passed the Lautenberg amendment, which struck the entire Craig amendment, so that S. 254 as passed by the Senate would leave current law on pawnshops in place. The House, on the other hand, adopted an amendment to H.R. 2122, offered by Representative Sessions, that would only require instant background checks when persons reclaim firearms that had been held for collateral by a pawn shop operator for over 365 days, but this bill was defeated.

Internet Gun Sales. Legislation (H.R. 1245/S. 637) has been introduced to regulate the transfer of firearms over the Internet. This legislation would require that any Internet site operator who offers firearms for sale be a federal firearms licensee, and that the Secretary of

the Treasury be notified of the address of the Internet site. The Senate rejected amendment to S. 254, offered by Senator Schumer, to provide regulation of firearms over the Internet.

Hand Guns. The Administration has called for enactment of three proposals related to handgun control. The first would limit handgun purchases to one per month. (For similar legislation already introduced, see H.R. 315, S. 407, and S. 891.) The second would raise the ban on possession of a handgun from 18 to 21 years of age. (For similar legislation, see H.R. 85 and H.R. 515.) The third would reestablish a waiting period (3 days) following a handgun purchase. (For similar legislation, see H.R. 1062 and S. 457.)

Federal Firearm Law Enforcement. The Administration has called for enactment of five proposals that would increase federal firearm law enforcement authority. The first would expand the Youth Crime Gun Interdiction Initiative (YCGII). The Senate approved amendment no. 344 to S. 254 that would authorize an expansion of the YCGII to 75 cities or counties in FY2000, 150 cities or counties in FY2002, and 250 cities or counties in FY2003. The House-passed H.R. 1501 included a similar provision. (For similar legislation, see H.R. 1342, H.R. 2037, S. 9, and S. 735.) Also, for further information, see *Crime Gun Trace Analysis Reports: The Illegal Youth Firearms Markets in 27 Communities* (Washington: October 1998). See: [<http://www.atf.treas.gov/>], click on "Publications."

The second would increase ATF authority to make multiple inspections of federal firearm licensees. (For similar legislation, see H.R. 920 and S. 534.) The third would establish a new mandatory penalty for transferring a firearm to a juvenile. The fourth would double the "gun-running" penalty for selling firearms without a license. And, the fifth would make some parents liable for knowingly or recklessly allowing a juvenile access to a firearm that was used later to cause injury or death.

Background Check Record Retention. The Department of Justice published a proposed rule that would reduce from 6 to 3 months the length of time that the Federal Bureau of Investigation would retain information pertinent to an approved firearms sale gathered as part of the instant background checks under the Brady Act (see 64 *Fed. Reg.* 10263-10265, March 3, 1999). The Senate-passed Lautenberg amendment (no. 366) to S. 254 would codify the 90 day record retention period. H.R. 2122, as introduced, included a provision requiring the immediate destruction of all records related to approved sales, but this bill was defeated.

Background Check Fee. The Administration has indicated in its FY2000 budget request for the Department of Justice that it will offer a legislative proposal for a user fee to recover the cost of instant background checks under the Brady Act. The FBI estimates that it will conduct 7 million checks at a cost of \$73 million in FY2000. The Administration maintains that if funding for these checks is covered with a direct appropriation rather than an user fee, fewer resources will be available for other critical law enforcement programs. Such a proposal would reverse a statutory provision prohibiting such fees included in the Omnibus Appropriations Act for FY1999 (P.L. 105-277). H.R. 2122, as introduced, included a provision to prohibit the collection of any fee for an instant background check, but this bill was defeated. The conference agreement on the FY2000 Commerce, Justice, State appropriations act (H.R. 2670), which passed both the House and Senate on September 20, 1999, includes a provision prohibiting such a fee in FY2000.

Project Exile and Federal Firearm Prosecutions. In 1997, the U.S. Attorney for the Eastern District of Virginia initiated “Project Exile” to coordinate federal, state, and local law enforcement efforts to reduce gun violence in Richmond, Virginia. At that time, Richmond had the second highest homicide rate for cities with populations of 100,000 or more. Of those homicides, 80% were committed with a firearm. As part of Project Exile, the U.S. Attorneys review cases involving felons with firearms, drug users/traffickers with firearms, and domestic violence referrals that involve firearms. These cases are prosecuted in federal court. A felon caught carrying a firearm while trafficking in drugs is very likely to be sentenced to 5 years in a federal prison. From 1997 to 1998, the homicide rate in Richmond dropped by 31%. This decrease in the homicide rate has been attributed to Project Exile, and U.S. Attorneys in other major metropolitan areas began adopting this approach. The House- and Senate-passed conference agreement on the FY2000 Commerce, Justice, State appropriations act (H.R. 2670) provides over \$7 million for the U.S. Attorneys “to continue and expand intensive firearms prosecutions.”

Gun Buy-Back Programs. Following a gun buy-back program conducted by the District of Columbia’s police department, on September 9, 1999, the Administration announced that it was designating \$15 million of funding for gun buy-back programs by providing grants to local housing authorities through the Department of Housing and Urban Development’s Public Housing Drug Elimination Program (PHEDP). The Administration has cited Section 3 of the United States Housing Act of 1937 (42 U.S.C. 1437(c) et al.) as the authority to initiate this grant program. Under this Act “low-income housing” is defined as “decent, safe, and sanitary dwellings.” Of the \$15 million dedicated for these purposes, the Administration plans to utilize \$1 million to conduct a study of the effectiveness of gun buy-back initiatives. (For similar legislative proposals, see H.R. 724 and H.R. 2813.)

While gun buy-back programs usually receive wide acclaim and favorable media coverage, there is little empirical research demonstrating the effectiveness of these programs. Below is a listing of the pros and cons in the debate:

Pros

- Gun buy-back programs remove lethal firearms from homes and, therefore, prevent gun violence by removing the possibility that a firearm may fall into the hands of a child (or adult) who may accidentally or intentionally shoot themselves or others.
- Gun buy-back programs are voluntary attempts by private citizens and communities to reduce gun violence. Such programs lend a sense of empowerment to communities seeking to end gun violence.

Cons

- Persons who are intent on using firearms for criminal purposes are unlikely to exchange firearms. If they do exchange a firearm, they may use the money to buy another bigger and more lethal firearm.
- Many gun buy-back programs offer some form of amnesty or immunity from prosecution to the person exchanging the firearm. If such an amnesty is not given, it is less likely that the firearms that need to be removed from the streets will be exchanged, with the result that firearms are likely to remain in the hands of criminals. (According to the Administration, their program will offer no form of amnesty for criminal activity.)

For further information, see *Under Fire: Gun Buy-Backs, Exchanges, and Amnesty Programs*, edited by Martha R. Plotkin (Police Executive Research Forum, 1996).

Gun Industry Liability. Several bills have been introduced that would allow states, local governments, organizations, businesses, and other persons to sue gun manufacturers or gun dealers to recover damages for deaths, injuries, and other related costs that were incurred due to the discharge of a firearm, if the gun manufacturers or dealers were negligent in the design, importation, marketing, distribution or sale of the firearm, or if manufacturers were responsible for its defective products (H.R. 1049; H.R. 1086/S. 560; H.R. 1233/S. 686). By contrast, legislation (H.R. 1032) has been introduced that would prohibit suits against firearms manufacturers and dealers in federal or state courts. (For further information, see *Gun Industry Liability: Lawsuits and Legislation*, by Henry Cohen, CRS Report RS20126).